

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

MFA. No. 554 of 1993()

OPMV.343/1988 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT: 3RD RESPONDENT

THE NATIONAL INSURANCE CO. LTD, THRISSUR
REPRESENTED BY ASSISTANT MANAGER, REGIONAL OFFICE,
M.G.ROAD, ERNAKULAM

BY ADV. SRI.GEORGE CHERIAN

RESPONDENTS: CLAIMANTS

1. MRS SULEKHA W/o ADAMU AGED 35,
KARUPPAM VEETTIL, KARALAM P.O.
KARALAM PANCHAYAT, THRISSUR DISTRICT
2. BASHEER S/o LATE ADAMU, KARUPPAM VEETTIL,
KARALAM P.O., KARALAM PANCHAYAT, THRISSUR
3. MUNEEER S/o LATE ADAMU, KARUPPAM VEETTIL
KARALAM P.O. KARALAM PANCHAYAT, THRISSUR
4. RAZIYA D/o LATE ADAMU, AGED 13, KARUPPAM VEETTIL,
KARALAM P.O., KARALAM PANCHAYAT, THRISSUR DISTRICT
5. SEENA D/o LATE ADAMU, AGED 11,
KARUPPAM VEETTIL, KARALAM P.O.
KARALAM PANCHAYAT, THRISSUR DISTRICT
6. SIRAJ S/o LATE ADAMU, AGED 7, KARUPPAM
VEETTIL, KARALAM P.O., KARALAM PANCHAYAT
THRISSUR DISTRICT
7. SAGEER;,S/o LATE ADAMU, AGED 4, KARUPPAM
VEETTIL, KARALAM P.O., KARALAM PANCHAYAT
THRISSUR DISTRICT
(RESPONDENTS 4 TO 7 ARE MINORS AND ARE THEREFORE
REPRESENTED BY THEIR MOTHER AND NATURAL GUARDIAN
FIRST RESPONDENT)
8. PAUL S/o ANTONY, CHALISSERY HOUSE,
MUTHEDATHARA DESOM, THANIAM VILLAGE

9. MOHAMMED ALI S/o SAIDUMUHAMMED ALI,
MATHILAKATH, PADINJATTUMURI DESOM,
CHERPU VILLAGE

R1 AND R4 TO R7 BY ADV. SRI.K.A.SHAMSUDEEN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.F.A. No 554 of 1993

Dated: 22nd January 2007.

JUDGMENT

Krishnan, J.

This is an appeal preferred against the award of the Claims Tribunal in O.P. (M.V) No 343 of 1988. The claim petition was filed on account of the death of Adamu etc. in a road accident. The Tribunal fixed the compensation at Rs 1,51,250/- and directed the Insurance Company to pay the amount with interest. It is against that decision this appeal is filed by the Insurance Company.

2. Heard counsel on both sides.

3. Insurance Company has filed an application, C.M.P. No 1920 of 1993 to amend the written statement and to incorporate a plea that the liability of the Insurance Company on the death of a third party is only Rs 50,000/-. It is submitted by the learned counsel that the said contention could not be taken in the original written statement and it was only a mistake. It is also submitted by him that in order to canvass the point copy of the policy was produced before the Tribunal as Ext B1, but the Tribunal

did not consider it and make any mention about the said contention at all. The accident had taken place when the 1939 Act was in force and there were policies which limited the liability of the Insurance Company. So it cannot be said that the Insurance Company was totally negligent. It was only an omission on their part to take up this contention in the written statement and they could have amended the written statement in the Tribunal itself but they did not do it. They have brought to the notice of the Tribunal the terms of the policy. Therefore in the interest of justice it is only just and proper to allow the application for amendment. C.M.P. No 1920 of 1993 is therefore allowed.

4. When the application for amendment is allowed it is only necessary that other parties be given an opportunity to file additional written statement and the owner has also to be intimated about the amendment because he will be the most affected person by the award. It may also be necessary for the Insurance Company to examine the officer to prove Ext B1 policy and also the terms and conditions thereof. . Therefore, in the interest of justice, the matter requires examination and therefore we set aside the award of the Tribunal only with respect to the liability of the Insurance Company and not on the question of quantum. The appeal is disposed of as follows:

MFA 554/1993

i) Amendment sought for as per C.M.P. No 1920 of 1993 is allowed. The Insurance Company is directed to carry out the amendment in the written statement at least from the Tribunal and for that purpose Registry is directed to forward C.M.P. No 1920 of 1993 to the Tribunal.

ii) Claimants as well as the owner are permitted to file additional written statement and thereafter all the parties are directed to adduce sufficient evidence in support of their contentions.

Iii) Tribunal is directed to issue notice to the owner so as to hear him because he will be the person affected by the decision in this case.

All the parties are directed to appear before the Tribunal on 20th February 2007 and the Tribunal shall dispose of the matter within a period of four months from the date of appearance of the parties before the Tribunal.

C.M.P. No 1921 of 1993 is dismissed.

Sd/-
(K.S. RADHAKRISHNAN, JUDGE)

Sd/-
(M.N. KRISHNAN, JUDGE)

22/01/2004
en/

[true copy]